SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 576.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,

vs.

JOHN J. BURCKHAUSER, PHILIP BOEHLER, AL BROSKEY ET AL.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

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Supreme Court of the United States.

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR,
vs.
JOHN J. BURCKHAUSER, PHILLIP BOEHLER, AL BROSKEY, Thomas Jones, Daniel Allen, Henry Prior, Ed. R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swartling, Prior Cook, Duff Fowler, Clem Davis, and George Phyles, defendants in error. | No. ——.

Transcript.

Error to the District Court of the United States for the Western Division of the Southern District of Ohio.

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No. 1137.

UNITED STATES DISTRICT COURT,
Southern District of Ohio, Western Division, ss:

In the District Court of the United States within and for the district and division aforesaid. Present: The Honorable Howard C. Hollister, judge. Among the proceedings had were the following, to wit:

THE UNITED STATES OF AMERICA,
vs.
JOHN J. BURCKHAUSER, PHILLIP BOEHLER, AL. Broskey, Thomas Jones, Daniel Allen, Henry Prior, Ed. R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swartling, Prior Cook, Duff Fowler, Clem Davis, and George Phyles. | Indictment No. 1137.

Be it remembered, that, to wit: On the twenty-fifth day of January, in the year of our Lord one thousand nine hundred and seventeen, came the grand jurors of the United States of America, within

and for the Western Division of the Southern District of Ohio, and presented to the court their certain bill of indictment herein, which said bill of indictment is clothed in the words and figures following, to wit:

3 In the District Court of the United States of America for the Southern District of Ohio, Western Division, of the October term in the year nineteen hundred and sixteen.

SOUTHERN DISTRICT OF OHIO,
Western Division, ss.

Count One—Section 19, Penal Code.—The grand jurors of the United States of America, empaneled and sworn in the District Court of the United States for the Western Division of the Southern District of Ohio, at the October term thereof, in the year nineteen hundred and sixteen, and inquiring for that division and district, upon their oaths and affirmations, charge and present that John J. Burckhauser, Phillip Boehler, A. Broskey, Thomas Jones, Daniel Allen, Henry Prior, Ed. R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swartling, Prior Cook, Duff Fowler, Clem Davis, and George Phyles, together with other persons whose names are to the grand jurors unknown, throughout the period of time from October first, nineteen hundred and sixteen, to and including November seventh, nineteen hundred and sixteen, in Hamilton County, within the State of Ohio, and within the Western Division of the Southern District of said State of Ohio, and within the jurisdiction of the above entitled court, did feloniously conspire, combine, confederate and agree together, and with other persons whose names are to the grand jurors unknown, to injure, oppress, threaten and intimidate certain citizens of the United States, to-wit:

4 James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William E. Chancelor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John Krause, William F. Thompson and George Hodges, and each of them, in the free exercise and enjoyment of certain rights and privileges secured to them and each of them by the Constitution and laws of the United States, to wit:

First, of being candidates for presidential electors from the State of Ohio at a general election which was to be, and in fact was held in the State of Ohio, and in the first congressional district thereof, on said seventh day of November, at which time presidential electors for the State of Ohio were to be, and in fact were voted for, chosen and elected, and at which time a United States Senator for the State of Ohio was to be, and in fact was voted for, chosen and elected, and at which time a Representative in the Congress of the United States of

America, in said first congressional district of Ohio, was to be, and in fact was, voted for, chosen and elected.

Second, of having qualified voters appear at the polls and vote at said election for presidential electors.

Third, of having only qualified voters vote at said election for presidential electors.

Fourth, of having only the votes of qualified voters cast, accepted, received, counted and returned at said election for presidential electors.

Fifth, of having their election or rejection decided and determined by voters who had not been bribed, and by votes which had not been purchased.

Sixth, of having each of the precinct election boards at said
5 election make a true, correct and accurate court and return of the legal and only the legal votes cast by qualified voters for presidential electors.

First, by then and there bribing a large number of otherwise qualified voters at said election and promising them in advance of their voting sums of money to vote against said presidential electors, and each of them, and to vote in favar of opponents of said presidential electors, and by causing the said voters so bribed and promised, as aforesaid, to purposely and intentionally place and cause to be placed, each respectively, his said vote in the ballot box at said election, which said voters so agreed to be purchased and bought were Daniel Allen, Henry Prior, Ed. R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swartling, Prior Cook, Duff Fowler, Clem Davis, George Phyles, and other persons whose names are, as aforesaid, to the grand jurors unknown.

Second, and also by causing each of said precinct election boards to accept and receive said illegal votes, and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return.

That in pursuance of said conspiracy and to effect the object thereof the defendant injured the said James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William E. Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John Krause, William F. Thompson, and George Hodges, and bribed a large number of otherwise qualified voters and caused the said illegal and wrongful votes of Daniel Allen, Henry Prior, Ed. R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swart-
6 ling, Prior Cook, Duff Fowler, Clem Davis, George Phyles, and other persons whose names are to the grand jurors unknown, to be cast and counted at said election, and caused the election boards

in the various precincts of said congressional district to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in said count and return.

That the said James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William E. Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John Krause, William F. Thompson, and George Hodges were candidates for presidential electors at said election and their names appeared upon the ballots to be voted thereat; that neither was a Senator or Representative or person holding office of trust or profit under the United States on said day or at any time within two years immediately prior thereto; that neither had ever engaged in insurrection or rebellion against the United States or given aid or comfort to the enemies thereof; that each was at said time, and had been for more than five years immediately prior thereto, a bona fide resident of the State of Ohio; that each on said day was twenty-five years old or upwards and was, at said time, a male citizen of the United States and each was a resident voter of a ward and precinct within the State of Ohio, in which wards and precincts they had respectively resided for more than thirty days immediately prior to said election; that each was a qualified voter and entitled to vote at said election; that each possessed all the qualifications required by law for presidential electors, including the qualifications above set out; that the name of each appeared upon the ballot to be voted for at said election.

7 And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present that at said time and place, and as a part of the aforesaid conspiracy, combination, confederation, and agreement, the said John J. Burckhauser, Phillip Boehler, Al. Broskey, Thomas Jones, Daniel Allen, Henry Prior, Ed. R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swartling, Prior Cook, Duff Fowler, Clem Davis, George Phyles, and other persons whose names are to the grand jurors unknown, did feloniously conspire, combine, confederate, and agree together to injure, oppress, threaten, and intimidate a certain citizen of the United States, to wit, Atlee Pomerene, in the free exercise and enjoyment of certain rights and privileges secured to him by the Constitution and laws of the United States, to wit:

First, of being a candidate for United States Senator from the State of Ohio at said election.

Second, of having qualified electors appear at the polls and vote at said election for United States Senator.

Third, of having only qualified voters vote at said election for United States Senator.

Fourth, of having only the votes of qualified voters cast, accepted, received, counted, and returned at said election for United States Senator.

Fifth, of having his election or rejection decided and determined by voters who had not been bribed, and by votes which had not been purchased.

Sixth, of having each of the precinct election boards at said election make a true, correct, and accurate count and return of the legal, and only the legal, votes cast by qualified voters for United States Senator.

(First), by then and there bribing a large number of otherwise qualified voters at said election and promising in advance of
8 their voting sums of money to vote against the said Atlee Pomerene, and to vote for an opponent of said Atlee Pomerene, and by causing the said voters so bribed and promised as aforesaid to purposely and intentionally place and cause to be placed, each respectively, his said vote in the ballot box at said election, which said voters so agreed to be purchased and bought were Daniel Allen, Henry Prior, Ed. R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swartling, Prior Cook, Duff Fowler, Clem Davis, George Phyles, and other persons whose names are to the grand jurors unknown; and also

(Second), by causing each of said precinct election boards to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return.

That in pursuance of said conspiracy and to effect the object thereof, the defendants feloniously injured the said Atlee Pomerene, and bribed a large number of otherwise qualified voters and caused the said illegal and wrongful votes of Daniel Allen, Henry Prior, Edward R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swartling, Duff Fowler, Clem Davis, George Phyles, and other persons whose names are to the grand jurors unknown, to be cast and counted at said election, and caused the election boards in the various precincts of said congressional districts to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in said count and return.

That the said Atlee Pomerene was a candidate for United States Senator from the State of Ohio at said election; that his name
9 appeared upon the ballots to be voted for at said election for said office.

That on said day the said Atlee Pomerene was more than thirty years of age, and was, and for more than nine years last past had been, a citizen of the United States, and a resident and inhabitant of the State of Ohio, and of the city of Canton, in the county of Stark, and of the second ward of said city, and that he was then

and theretofore duly registered and entitled to vote therein according to the requirements of law; that he had never engaged in insurrection or rebellion against the United States, or given aid or comfort to the enemies thereof, and that he possessed all the qualifications required by law for United States Senator, including the qualifications above set forth.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present that at said time and place, and as a part of the aforesaid conspiracy, combination, confederation, and agreement, the said John J. Burckhauser, Phillip Boehler, Al. Broskey, Thomas Jones, Daniel Allen, Henry Prior, Ed. R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swartling, Duff Fowler, Clem Davis, George Phyles, and said other persons whose names are to the grand jurors unknown, did feloniously conspire, combine, confederate, and agree together to injure, oppress, threaten, and intimidate a certain citizen of the United States, to wit, Edward H. Brink, in the free exercise and enjoyment of rights and privileges secured to him by the Constitution and laws of the United States, to wit:

First, of being a candidate for Representative in Congress for the first congressional district of the State of Ohio, at said election;

Second, of having qualified voters appear at the polls and vote at said election for Representative in Congress from said district.

Third, of having only qualified voters vote at said election for Representative in Congress from said district.

Fourth, of having only the votes of qualified voters cast, accepted, received, counted, and returned at said election for Representative in Congress from said district.

Fifth, of having his election or rejection decided and determined by voters who had not been bribed and by votes which had not been purchased.

Sixth, of having each of the precinct election boards at said election make a true, correct, and accurate count and return of the legal, and only the legal, votes cast by qualified voters for Representative in Congress in said congressional district.

(First), by then and there bribing a large number of otherwise qualified voters at said election, and promising them, in advance of their voting, sums of money to vote against the said Edward H. Brink and in favor of an opponent, and by causing the said voters so bribed and promised, as aforesaid, to purposely and intentionally place and cause to be placed, each respectively, his own vote in the ballot box at said election, which said voters so agreed to be purchased and bought were Daniel Allen, Henry Prior, Ed R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swartling, Duff Fowler, Clem Davis, George Phyles, and other persons whose names are to the grand jurors unknown; and also,

(Second), by causing each of said precinct election boards to accept and receive illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election
11 by including said illegal votes in such count and return.

That in pursuance of said conspiracy and to effect the object thereof, the defendants feloniously injured the said Edward H. Brink, in the manner so planned as aforesaid, and bribed a large number of otherwise qualified voters, and caused the said illegal and wrongful votes of Daniel Allen, Henry Prior, Ed. R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swartling, Duff Fowler, Clem Davis, George Phyles, to be cast and counted at said election; and caused the election boards in the various precincts of said congressional district to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election, by including said illegal votes in said count and return.

That the said Edward H. Brink, was a candidate for a member of the House of Representatives in the Congress of the United States of America in the first congressional district of the State of Ohio at said election; that his name appeared upon the ballots to be voted for at said election for said office; that on said election day the said Edward H. Brink was more than twenty-five years of age, and was, and for more than seven years immediately prior thereto had been a citizen of the United States, and a resident and inhabitant of the State of Ohio and of the city of Norwood, in the county of Hamilton, and of the second ward of said city, and that he was then and theretofore duly registered and entitled to vote therein according to the requirements of law; that he had never been engaged in insurrection or rebellion against the United States or given aid or comfort to the enemies thereof, and he possessed all the other qualifications required by law for a member of the House of Representatives of the United States of America, including the qualifications above set forth.

12 And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present that at said time and place, and as a part of the aforesaid conspiracy, combination, confederation and agreement, the said John J. Burckhauser, Phillip Boehler, Al. Broskey, Thomas Jones, Daniel Allen, Henry Prior, Edward R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swartling, Duff Fowler, Prior Cook, Clem Davis, George Phyles, and said other persons whose names are to the grand jurors unknown, did feloniously conspire, combine, confederate and agree together and injure, oppress, threaten and intimidate certain citizens of the United States, to wit: each and all of the qualified electors who might actually vote at said election, in each of the voting precincts of the said first congressional district, and each and all of the qualified electors at said election in each of the voting precincts of the State of Ohio, and that

said qualified electors cannot now, and could not ever, all be to the grand jurors identified each by his individual name, and such of said electors as can or could be so identified, are too numerous to list by name in this indictment without unreasonably lengthening the same, and are so numerous as that it would require an unreasonable prolongation of the inventigations by this grand jury to so identify them, in the free exercise and enjoyment of certain rights and privileges secured to them and each of them by the Constitution and laws of the United States, to wit:

First. The right to have the votes and ballots for presidential electors, United States Senators and Representatives in Congress in said congressional district cast in their respective precincts at said election, confined to the votes and ballots of legal and qualified voters of said precincts.

Second. The right to have the votes and ballots cast and
13 counted at said election in said precincts for presidential electors, United States Senators and Representatives in Congress from said congressional district, confined to those cast by electors who had not been bribed, and who had not sold their votes.

Third. The right to have each lawful vote and ballot for presidential electors, United States Senators, and Representatives in Congress at said election, counted to its full strength, unaffected and unimpaired by the casting of votes in said precincts by men who had been bribed and accepted money therefor, and by counting of said votes or any thereof.

Fourth. The right to have the election boards in said election precincts accept and receive only lawful votes cast thereat, and to make a true, correct, and accurate count and return covering only the lawful votes cast by qualified voters for presidential electors, United States Senators, and Representatives in Congress from said district, by then and there bribing in large number of otherwise qualified voters at said election and promising them in advance of their voting sums of money to vote and cast their ballots in said precincts at said election for presidential electors, United States Senator, and Representative in Congress from said congressional district, and by causing the election boards in said precincts to accept and receive said illegal votes and make an untrue, incorrect and inaccurate count and return of the votes cast at said election, by including said illegal votes in such count and return, which men so bribed and purchased included Daniel Allen, Henry Prior, Edward R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swartling, Duff Fowler, Clem Davis, George Phyles, and other persons whose names are to the grand jurors unknown.

14 That in pursuance to said conspiracy, and to effect the object thereof, the defendants injured each and all of the qualified electors aforesaid; and as so planned, bribed and purchased the votes of otherwise qualified voters at said election, to wit: Daniel Allen, Henry Prior, Edward R. Von Martels, John W. Jones, Elbert

W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swartling, Duff Fowler, Clem Davis, George Phyles, and other persons whose names are to the grand jurors unknown, and promised and agreed in advance of their voting to pay them money therefor; and caused them to vote and cast their ballots in said precincts for presidential electors, United States Senator and Representative in Congress from said district, and cause the election boards in said precincts to accept and receive said illegal votes and to make an untrue, incorrect, and inaccurate count and return of the votes cast at said election by including said illegal votes in such count and return.

Contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

15 Second Count—Section 19, Penal Code.—And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that, on the seventh day of November, 1916, a general election was held in the State of Ohio under the laws thereof and under the laws of the United States, for the election, among others, of twenty-four presidential electors and a United States Senator for said State, and of a Representative in the Congress of the United States from the first congressional district of said State, which congressional district then included a part of Hamilton County in said State.

That at said election James E. Campbell, Judson Harmon, Alfred M. Cohen, Chas. A. Aull, Edwin Ozias, Gainor Jennings, Timothy T. Ansberry, Stephen D. McLaughlin, Thomas D. Wallace, W. W. Wolford, D. C. Donovan, Louis Horwitz, H. M. Dunnick, Fred J. Heer, Frank T. Dore, David King Paige, Harry W. Amos, William E. Chancellor, James P. Seward, W. O. Wallace, D. F. Dunlavy, John Krause, William F. Thompson, and George Hodges, among others, were candidates for presidential electors, and Atlee Pomerene, among others, was a candidate for United States Senator, and Edward H. Brink, among others, was a candidate for Representative in the Congress of the United States from the said congressional district.

That each and all of the said candidates for presidential electors, and for the office of United States Senator, and for the office for Representative in the Congress of the United States, had been theretofore regularly and lawfully chosen and nominated to be such candidates at a primary election next preceding the general election, and held under the laws of the State of Ohio.

That at the time when each and all of said candidates were so chosen and nominated, and continuously thereafter until and 16 including the said seventh day of November, 1916, each and every one thereof saw duly qualified under the Constitution and laws of the United States and of the State of Ohio, to be a candidate, each for the particular office for which he was chosen and nominated, and, likewise, duly qualified to hold such office.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further present that the said John J. Burckhauser, Phillip Boehler, Al. Broskey, Thomas Jones, Daniel Allen, Henry Prior, Ed. R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swartling, Prior Cook, Duff Fowler, Clem Davis, George Phyles, each late of the said Hamilton County and of the said congressional district, and being hereinafter referred to together as defendants, continuously and at all times throughout the period of time extending from the first day of October, 1916, to and including to said seventh day of November, 1916, at and within the said county of Hamilton, and at and within the said congressional district, in the western division of the southern district of Ohio, each then and there well knowing all the premises aforesaid, unlawfully and feloniously did conspire, combine, confederate, and agree together, and with other persons to the said grand jurors unknown, to injure and oppress certain citizens of the said State and of the United States in the free exercise and enjoyment of certain rights and privileges secured to them, respectively, by the Constitution and laws of the United States; that is to say, the right and privilege appertaining to said several candidates, and to all the legally qualified voters at said election voting in said congressional district (the latter forming a class of
17 persons not capable of individual designation).

(First), of having none of such legally qualified voters unlawfully or fraudulently prevented from voting in said congressional district at said election for such candidates for presidential electors, United States Senator, and Representative as they chose to vote for.

(Second), of having only legal votes cast in said congressional district at said election for any candidate for presidential elector, United States Senator, or Representative in the Congress of the United States, and accepted, received, counted, and returned by the election boards of the said county; and

(Third), of having such election determined by votes not influenced by bribery, fraud, or the wrongful use of money.

And that a description of the means and methods whereby said citizens were so to be injured and oppressed in the free exercise and enjoyment of their said rights and privileges by the said defendants is as follows, to wit:

Said defendants in order fraudulently to favor certain other candidates for the said offices at said election, to wit, U. G. Danman, Edwin Jones, Max Burgheim, George McG. Morris, Lyburn T. Palmer, David Oldham, Samuel A. Rennolet, Newton P. Foster, John M. Mulford, Jacob W. Byers, Solon O. Richardson, John B. Lindsey, Barton Walters, Albert E. Sartain, Sol. M. Wolf, N. S. Everhard, Charles L. Casey, John A. Fouts, Wilson Bradrick, Avery C. Jones, Edward O. Whitney, Edward W. Horn, Harry L. Vail, and W. W. Hall, as candidates for presidential electors;
18 Myron T. Herrick, as candidate for United States Senator; and Nicholas Longworth, as candidate for Representative in

the Congress of the United States, and to secure the election of such other candidates, instead of the election of the candidates hereinbefore first named, without regard to the true preference and choice of said legally qualified voters of said congressional district, unlawfully were to present, by force, intimidation, and fraud, to be used and practiced upon them by said defendants, as many of the said legally qualified voters of said congressional district who were desirous of voting for the candidates first above mentioned from voting at the said election for those candidates as said defendants could prevent by those means; and were to procure, by bribery, payment of money to them for so doing, others of said legally qualified voters desirous of voting for the candidates first above mentioned to vote at said election for said other candidates instead of said candidates first above named, and thereby procuring the acceptance, receipt, counting, and returning in due course by said election boards of said congressional district of such illegal votes and of such votes so influenced by bribery, fraud, and improper use of money, as aforesaid.

And so the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do say, that said John J. Burckhauser, Phillip Boehler, Al. Broskey, Thomas Jones, Daniel Allen, Henry Prior, Ed. R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swartling, Prior Cook, Duff Fowler, Clem Davis, George Phyles, throughout the period of time, at the place, and in manner and form aforesaid,
19 unlawfully and feloniously did conspire to injure and oppress citizens in the free exercise and enjoyment of rights and privileges secured to them by the Constitution and laws of the United States.

Against the peace and dignity of the United States, and contrary to the form of the statute in such case made and provided.

20 Third Count—Section 37, Penal Code.—The grand jurors aforesaid, upon their oaths and affirmations aforesaid, further charge and present that John J. Burckhauser, Phillip Boehler, Al. Broskey, Thomas Jones, Daniel Allen, Henry Prior, Edward R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Harry Toker, Joseph Swartling, Prior Cook, Duff Fowler, Clem Davis, George Phyles, together with other persons whose names are to the grand jurors unknown, continuously and at all times throughout the period of time extending from the first day of October, 1916, to and including the seventh day of November, 1916, in Hamilton County, within the State of Ohio, and within the western division of the southern district of Ohio, and within the jurisdiction of the above entitled court, did feloniously conspire, combine, confederate, and agree together, and with other persons whose names are to the grand jurors unknown, to defraud the United States of America, in the manner and for the purpose, as follows.

First, by perverting and obstructing, and corruptly administering and procuring to be corruptly administered, and maladministering and causing to be maladministered, and by committing and causing to be committed, wilful frauds upon each of the following sections of the Constitution of the United States, to wit:

(a) Article 2, section 1, of the Constitution of the United States, providing for the election of the President and Vice President of the United States.

(b) The twelfth amendment to said Constitution, providing
21 for the election of President and Vice President of the United States.

(c) The seventeenth amendment to said Constitution, providing for the election of Senators by direct vote.

(d) Article 1, section 2, of said Constitution, providing for the election of Representatives in the Congress of the United States of America.

(e) Article 1, section 4, of said Constitution, providing for the time, place, and manner of holding elections for Senators and Representatives of the United States.

(f) An act of the Congress of the United States, entitled, "An act providing a temporary method of conducting the nomination and election of United States Senators," approved June 4th, 1914.

Second, by denying to and preventing the enjoyment by the United States of America of certain governmental rights and functions to it then and there belonging, namely:

(a) The right and function to have the election of candidates for presidential electors, United States Senators and Representatives in the Congress of the United States of America determined by the votes of voters who have not been bribed;

(b) The right and function to have the election boards accept, receive, count, and return the legal, and only the legal, votes cast by qualified voters for presidential electors, United States Senators, and Representatives in the Congress of the United States;

(c) The right and function to have all qualified voters vote for presidential electors, United States Senators, and Representatives in the Congress of the United States without unlawful interference and without intimidation;

22 Third, by obtaining from the governor of the State of Ohio a certificate of election, sealed with the seal of and attested by the secretary of state of said State, certifying that the general election held on Tuesday, November seventh, A. D. nineteen hundred and sixteen, at which presidential electors and a United States Senator for the State of Ohio and a Representative in the Congress of the United States for the first congressional district of the State of Ohio were voted for, chosen, and elected one Nicholas Longworth, whom they intended as a part of said conspiracy to elect by fraud and illegality and contrary to the laws of said State of Ohio and the Constitution and laws of the United States, in the manner hereinafter set out, was regularly elected a Representative in the

Congress of the United States from the first congressional district in said State at said election and in accordance with the laws of said State and the Constitution and laws of the United States of America, and by causing said Nicholas Longworth to present said certificate of election to the House of Representatives of the United States of America, and to the Clerk of the last preceding House of Representatives of the United States of America, before the first meeting of the Sixty-fourth Congress of the United States, in order that the said Nicholas Longworth should have his name placed on the roll of the Representatives elected in said body.

Fourth, by forcing upon the United States of America and upon the House of Representatives of the Congress thereof as a duly elected Member of said House of Representatives the said
23 Nicholas Longworth, and thereby securing for him, the said Nicholas Longworth, the privileges, immunities, and emoluments of a Member of the said House of Representatives, including the statutory pay of seventy-five hundred dollars per annum provided by law as the compensation for the yearly service of any duly elected Member of said House of Representatives.

Fifth, by voting and causing to be voted for candidates for presidential electors and for candidates for United States Senators and for a candidate for Representative in Congress at said election in the various election precincts of the first congressional district, Hamilton County, in the said State of Ohio, a large number of persons to be thereafter chosen by the said defendants, who did not or would not then have or possess the qualifications for electors required by the seventeenth amendment, and by article 1, section 2, of the Constitution of the United States of America and by the laws of the State of Ohio governing the qualifications of electors at said election, with full knowledge upon the part of said defendants and each of them that the said persons so to be voted and caused to be voted, as aforesaid, did not and would not then have or possess the requisite qualifications for electors at said election.

Sixth, by corruptly purchasing and debauching the said election by bribing and buying any men they, the said defendants, could bribe and buy, which said men so to be bought, bribed, and purchased were to be chosen and selected by said defendants in the various precincts of the first congressional district of said Hamilton County and by procuring said men.

24 Seventh, by causing the election boards in the various precincts of said congressional district to accept and receive said illegal votes and to make an untrue, incorrect and inaccurate return of the votes cast therein, by including said illegal votes in said count and return.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that, afterwards, to wit, on the seventh day of November in the year of our Lord one thousand nine hundred and sixteen, in pursuance of, and in furtherance of, and in execution of, and for the purpose of carrying out and to effect the

object, design and purpose of said conspiracy, combination, confederation and agreement aforesaid, the said defendant John J. Burckhauser procured the said defendant Harry Toker, a registered voter in precinct U, ward 18, of the city of Cincinnati, in the first congressional district of Ohio, to vote the straight Republican ticket at said election, and then and there and at the same time instructed and promised the said defendant, Harry Toker, that after he had voted in accordance with said instruction and agreement he would be paid money therefor; that pursuant to said instructions and agreement and in furtherance of said conspiracy, said defendant, Harry Toker, so marked his ballot and cast the same as to vote the straight Republican ticket, and after having cast his said ballot and so voted and in further pursuance of said instructions and agreement and to effect the object of said conspiracy, and immediately after he had voted in accordance with said instructions and agreement, the
25 said Harry Toker, met the said defendant, John J. Burckhauser, and in the presence of said defendant, Thomas Jones, and in close proximity to the voting place in said ward and precinct, the said defendant John J. Burckhauser then and there paid the said defendant Harry Toker the sum of one dollar.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that, afterwards, to wit, on the seventh day of November in the year of our Lord one thousand nine hundred and sixteen, in pursuance of, and in furtherance of, and in execution of, and for the purpose of carrying out and to effect the object, design and purpose of said conspiracy, combination, confederation and agreement aforesaid, the said defendant, John J. Burckhauser, procured the said defendant, Ed. R. Von Martels, a registered voter in precinct U, ward 18, of the city of Cincinnati, in the first congressional district of Ohio, to vote the straight Republican ticket at said election, and then and there and at the same time instructed and promised the said defendant, Ed. R. Von Martels, that after he had voted in accordance with said instruction and agreement he would be paid money therefor; that pursuant to said instruction and agreement and in furtherance of said conspiracy, said defendant, Ed. R. Von Martels, so marked his ballot and cast the same as to vote the straight Republican ticket, and after having cast his said ballot and so voted in the further pursuance of said instructions and agreement and to effect the object of said conspiracy, and immedintely after he had voted in accordance
26 with said instruction and agreement, the said Ed. R. Von Martels, met the said defendant, John J. Burckhauser, and in the presence of the said defendant, Thomas Jones, and in close proximity to the voting place in said ward and precinct, the said defendant John J. Burckhauser then and there paid the said defendant Ed. R. Von Martels, the sum of one dollar.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that, afterwards, to wit, on the seventh day of November, in the year of our Lord one thousand

nine hundred and sixteen, in pursuance of, and in furtherance of, and in execution of, and for the purpose of carrying out and to effect the object, design and purpose of said conspiracy, combination, confederation, and agreement aforesaid, the said defendant, John J. Burckhauser, procured the said defendant, John W. Jones, a registered voter in precinct U, ward 18, of the city of Cincinnati, in the first congressional district of Ohio, to vote the straight Republican ticket at said election, and then and there and at the same time instructed and promised the said defendant, John W. Jones, that after he had voted in accordance with said instructions and agreement he would be paid money therefor; that pursuant to said instructions and agreement and in furtherance of said conspiracy, said defendant, John W. Jones, so marked his ballot and cast the same as to vote the straight Republican ticket, and after having cast his said ballot and so voted, and in further pursuance of said instructions and agreement and to effect the object of said conspiracy, and immediately after he had voted in accordance with said instructions and agreement, the said John W. Jones met the said
27 defendant, John J. Burckhauser, and in the presence of said defendant, Thomas Jones, and in close proximity to the voting place in said ward and precinct, the said defendant, John J. Burckhauser, then and there paid the said defendant, John W. Jones, the sum of one dollar.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that, afterwards, to wit, on the seventh day of November, in the year of our Lord one thousand nine hundred and sixteen, in pursuance of, and in furtherance of, and in execution of, and for the purpose of carrying out and to effect the object, design, and purpose of said conspiracy, combination, confederation, and agreement aforesaid, the said defendant John J. Burckhauser procured the said defendant Joseph Swartling, a registered voter in precinct U, ward 18, of the city of Cincinnati, and in the first congressional district of Ohio, to vote the straight Republican ticket at said election, and then and there and at the same time, and by and with the use of a sample ballot to demonstrate the same, instructed and procured the said Joseph Swartling to mark his ballot by placing an X in the circle under the design of the eagle on said ballot and cast the vote of him, the said Joseph Swartling, in said ward and precinct, in accordance with said procurement and instruction; that the said John J. Burckhauser then and there and at the same time instructed and promised the said Joseph Swartling that after he had voted in accordance with said instruction he would be paid money therefor; that pursuant to said instruction and agreement and in furtherance of said conspiracy, said defendant
28 Joseph Swartling, marked his ballot by placing an X in the circle under the design of the eagle thereon and so cast the same, and after having cast his said ballot and in further pursuance of said instruction and agreement and to effect the object of

said conspiracy, and immediately after he had voted in accordance with said instruction and agreement, the said Joseph Swartling, met the said defendant Philip Boehler, in the premises known as No. 501 West 4th Street, in the city of Cincinnati, and in the first congressional district of Ohio, which said premises are in close proximity to the voting place in said ward and precinct, and then and there and in accordance with said agreement and in furtherance of said conspiracy, and to effect the object thereof, said defendant Philip Boehler, paid said defendant Joseph Swartling, the sum of one dollar.

And the grand jurors aforesaid, upon their oaths and affirmations aforesaid, do further charge and present that, afterwards, to wit, on the seventh day of November, in the year of our Lord one thousand nine hundred and sixteen, in pursuance of, and in furtherance of, and in execution of, and for the purpose of carrying out and to effect the object, design and purpose of said conspiracy, combination, confederation and agreement aforesaid, the said defendant John J. Burckhauser procured the said defendant Henry Langhorst, a registered voter in precinct U, ward 18, of the city of Cincinnati, in the first congressional district of Ohio, to vote the straight Republican ticket at said election, and then and there and at the same time instructed and promised the said defendant Henry Langhorst that after he had voted in accordance with said instruction and agreement he would be paid money therefor; that pursuant to said instructions and agreement in *in* furtherance of said conspiracy,
29 said defendant Henry Langhorst marked his ballot by placing an X in the circle under the design of the eagle thereon, and so cast the same, and after having cast his said ballot, and in further pursuance of said conspiracy, and immediately after he had voted in accordance with said instruction and agreement, the said Henry Langhorst met the said defendant Philip Boehler in the premises known as No. 501 West Fourth Street, in the city of Cincinnati, and in the first congressional district of Ohio, which said premises are in close proximity to the voting place in said ward and precinct, and then and there, and in accordance with said agreement, and in furtherance of said conspiracy, and to effect the object thereof, said defendant Philip Boehler paid said defendant Henry Langhorst the sum of one dollar.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

STUART R. BOLIN,
United States Attorney.

The foregoing indictment was endorsed as follows: A true bill. J. L. Clark, foreman. Filed January 25, 1917. B. E. Dilley, Clerk.

30 And afterwards, to wit, on the 22nd day of May, A. D. 1917, came the defendants, John J. Burckhauser, Philip Boehler, and A. Broskey, by their attorneys, and filed in the clerk's office of the court aforesaid a certain demurrer in this cause, which said demurrer is clothed in the words and figures following, to wit:

Demurrer.

In the District Court of the United States of America, for the Southern District of Ohio, Western Division.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* JOHN J. BURCKHAUSER, PHILLIP BOEHLER, AND A. Broskey, defendants.	No. 1137.

Demurrer of John J. Burckhauser, Phillip Boehler, and A. Broskey to the indictment.

Now come the defendants, John J. Burckhauser, Phillip Boehler, and A. Broskey, and demur to the indictment herein and to each and every count thereof for the reason that the said indictment and the several counts thereof do not state facts sufficient to charge offenses against the laws of the United States of America.

Defendants further demur to each of the several counts hereof by reason of defects apparent therein, the particulars of said defects in said counts being as follows, to wit:

First and second counts.

Defendants demur to the first and second counts of said indictment for the reason that the same do not state facts sufficient to charge an offense against the laws of the United States of America in the following particulars, to wit:

First. Because it appears from the allegations of said counts that the various rights and privileges therein set forth, alleged to be the rights and privileges of James E. Campbell and other alleged
31 candidates for presidential electors; Atlee Pomerene, alleged candidate for Senator of the United States from the State of Ohio; Edward Brink, alleged candidate for Member of the House of Representatives of the United States from the State of Ohio, and all of the qualified electors in each of the voting precincts of the first congressional district of the State of Ohio and each and all of the qualified electors in each of the voting precincts of the State of Ohio, are not secured to them or either of them, by the Constitution or laws of the United States.

Second. Because it does not appear from the allegations of said counts that James E. Campbell and other alleged candidates for presidential electors; Atlee Pomerene, alleged candidate for Senator of the United States from the State of Ohio; Edward Brink,

alleged candidate for the House of Representatives of the United States from the State of Ohio, and all of the qualified electors in each of the voting precincts of the first congressional district of the State of Ohio, and each and all of the qualified electors in each of the voting precincts of the State of Ohio could have been injured, oppressed, threatened, or intimidated in the free exercise and enjoyment of any right or privilege secured to them or either of them by the Constitution or laws of the United States by reason of said alleged conspiracy.

Third. Because said counts fail to set forth any offense committed against the laws of the United States, but the offense sought to be alleged therein, if any is so described, was an offense against the laws of the State of Ohio.

Fourth. Because the said counts and each of them show that this court has no jurisdiction to try and punish the alleged offenses therein described.

Fifth. Because in other particulars said counts and each of them fail to describe any offense against the laws of the United States.

Third count.

32 Defendants demur to the third count of said indictment for the reason that the same does not state sufficient to charge an offense against the laws of the United States of America in the following particulars, to-wit:

First. Because the allegations of said count do not describe a conspiracy either to commit an offense punishable by the laws of the United States or to defraud the United States in any manner or for any purpose.

Second. Because the offense therein set forth, if the same be an offense, is not an offense against the United States, but against the State of Ohio.

Third. Because the United States can not be defrauded in any manner or for any purpose by the alleged conspiracy of the defendants as set forth in said count.

Fourth. Because the United States can not be defrauded in any manner or for any purpose by any of the alleged purposes of the defendants alleged to have been the results sought to be attained by by said conspiracy.

Fifth. Because the alleged overt acts described in said counts could not in any manner or for any purpose defraud or tend to defraud the United States.

Sixth. Because in other particulars, said count fails to describe any offense against the laws of the United States.

SHERMAN T. MCPHERSON,
JOHN R. HOLMES,
FROOME MORRIS,
M. MULLER,
Attorneys for Defendants.

33 And afterwards, to-wit: on the 22nd day of May A. D. 1917, an entry was made upon the journal of said court in said cause, which said entry is clothed in the words and figures following, to-wit:

Entry—2–332.

District Court of the United States of America, Southern District of Ohio, Western Division.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
JOHN J. BURCKHAUSER ET AL., DEFENDANTS. } No. 1137. Entry.

This day this cause came on to be heard on the indictment and the demurrer thereto, and being argued by counsel, and the court being fully advised in the premises, finds it has no jurisdiction of the matters and things charged in said indictment, and it is therefore ordered, adjudged, and decreed that said demurrer be and it is hereby sustained, and the defendants, and each of them be and they are hereby discharged from further attendance upon this court, to all of which the United States by its counsel excepts.

HOLLISTER, *Judge.*

And afterwards, to-wit: on the 19th day of June, A. D. 1917, the following petition for writ of error was filed in the clerk's office of said court:

Petition for writ of error.

United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF,
v.
JOHN J. BURCKHAUSER, PHILIP BOEHLER, AL. Broskey, Thomas Jones, Daniel Ellen, Henry Prior, Ed R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry
34 Langhorst, Henry Toker, Joseph Swartling, Prior Cook, Duff Fowler, Clem Davis and George Phyles, defendants. } No. 1137. Petition for writ of error.

Now comes the United States of America, plaintiff herein, and says that on or about the twenty-second day of May, 1917, this court entered a judgment herein against the plaintiff and in favor of the defendants, in which judgment and the proceedings had prior thereto in this cause certain errors were committed to the prejudice of this plaintiff, all of which will more in detail appear from the assignments of error which is filed with this petition.

Wherefore, the United States of America, plaintiff herein, prays that a writ of error may issue in its behalf to the Supreme Court of the United States for the correction of the errors so complained of, and that a transcript of the record of the proceedings and papers in this cause duly authenticated may be sent to the said Supreme Court of the United States.

STUART R. BOLIN,
United States Attorney for the Southern District of Ohio.
JAMES R. CLARK,
Assistant U. S. Attorney for the Southern District of Ohio.

Assignment of errors.

And afterwards, to-wit: on the 19th day of June, A. D. 1917, the following assignment of errors was filed in the clerk's office of said court:

United States District Court, Southern District of Ohio, Western Division.

35 THE UNITED STATES OF AMERICA, PLAINTIFF,
v.
JOHN J. BURCKHAUSER, PHILLIP BOEHLER, AL. Broskey, Thomas Jones, Daniel Ellen, Henry Prior, Ed. R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Henry Toker, Joseph Swartling, Prior Cook, Duff Fowler, Clem Davis and George Phyles, defendants.

No. 1137. Assignment of errors.

Assignment of errors.

The plaintiff in this action, in connection with its petition for a writ of error, makes the following assignment of errors, which it avers were committed upon the trial of this cause, to-wit:

I. The court erred in its decision and judgment sustaining the demurrer to the indictment and each count thereof.

II. (a) The court erred in its decision and judgment sustaining the demurrer to the first count of said indictment.

(b) The court erred in its decision and judgment sustaining the demurrer to the second count of said indictment.

III. (a) The court erred in its construction of the statute upon which the first count of said indictment was based, and

The court further erred in its application of said erroneous construction of said statute to the facts alleged in said first count of said indictment.

(b) The court erred in its construction of the statute upon which the second count of said indictment was based; and

The court further erred in its application of said erroneous construction of said statute to the facts alleged in said second count of said indictment.

IV. (a) The court erred in its decision and judgment in not overruling the demurrer to the first count of said indictment.

36 (b) The court erred in its decision and judgment in not overruling the demurrer to the second count of said indictment.

V. The court erred in its decision and judgment in not overruling the demurrer to said indictment and to each count thereof.

For these reasons the plaintiff, The United States of America, asks that this case be reviewed, and that such judgment be rendered in the Supreme Court of the United States as should have been rendered in the court below, and that such action be taken as will protect the rights of the plaintiff in the premises.

STUART R. BOLIN,
United States Attorney for the Southern District of Ohio.
JAMES R. CLARK,
Assistant U. S. Attorney for the Southern District of Ohio.

And afterwards, to wit, on the 19th day of June, A. D. 1917, an entry was made upon the journal of said court in said cause, which said entry is clothed in the words and figures following, to wit:

Entry—12-354.

United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF, *vs.* JOHN J. BURCKHAUSER, PHILLIP BOEHLER, AL. Broskey, Thomas Jones, Daniel Ellen, Henry Prior, Ed. R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Henry Toker, Joseph Swartling, Prior Cook, Duff Fowler, Clem Davis, and George Phyles, defendants.	Entry. No. 1137.

Now comes the United States attorney on behalf of the plaintiff and presents for allowance a petition for a writ of error and

37 assignments of error accompanying same, upon consideration of which the court hereby allows said petition and orders a writ of error to the Supreme Court of the United States.

HOLLISTER,
United States District Court, S. D. O.

38 And afterwards, to wit, on the 27th day of June, A. D. 1917, the following stipulation was filed in the clerk's office of said court:

Stipulation.

United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA, PLAINTIFF, *vs.* JOHN J. BURCKHAUSER, PHILLIP BOEHLER, AL. BROSKEY, Thomas Jones, Daniel Ellen, Henry Prior, Ed. R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Henry Toker, Joseph Swartling, Prior Cook, Duff Fowler, Clem Davis, and George Phyles, defendants.	No. 1137. Stipulation.

It is hereby agreed and stipulated that the record in this cause, so far as the undersigned are concerned, shall consist of the following: Indictment, demurrer to indictment, opinion of court on demurrer, order sustaining demurrer, petition for writ of error, assignments of error and order allowing writ.

The clerk is therefore requested to prepare a transcript of the foregoing pleadings and papers to be filed in the Supreme Court of the United States.

THE UNITED STATES OF AMERICA.
By STUART R. BOLIN,
United States Attorney.
Per JAMES R. CLARK,
Assistant U. S. Attorney.
JOHN J. BURCKHAUSER,
PHILLIP BOEHLER, and
A. BROSKEY,
By JOHN R. HOLMES,
SHERMAN T. MCPHERSON,
FROOME MORRIS,
M. MULLER,
Their Attorneys.
HENRY PRIOR and
PRIOR COOK,
By A. LEE BEATY,
Their Atty.

* * * * * * *

57 United States District Court, Southern District of Ohio, Western Division.

THE UNITED STATES OF AMERICA
vs.
JOHN J. BURCKHAUSER ET AL. } No. 1137.

THE UNITED STATES OF AMERICA,
Southern District of Ohio, Western Division, ss:

I, B. E. Dilley, clerk of the District Court of the United States within and for the district and division aforesaid, do hereby certify that the foregoing is a true and correct transcript of the opinion of the court and of those portions of the record in the above-entitled cause, designated in the stipulation filed therein on June 27, 1917, as the same remain of record and on file in the office of the clerk of said court, and that the same constitutes the return to the annexed writ of error.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said court at the city of Cincinnati, Ohio, this 11th day of July, A. D. 1917.

[SEAL.]

B. E. DILLEY, *Clerk.*
By HARRY F. RABE, *Deputy.*

58 UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the honorable the judges of the District Court of the United States for the Southern District of Ohio, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court before you, or some of you, between the United States of America, plaintiff, and John J. Burckhauser, Phillip Boehler, Al Broskey, Thomas Jones, Daniel Ellen, Henry Prior, Ed R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Henry Toker, Joseph Swartling, Prior Cook, Duff Fowler, Clem Davis, and George Phyles, defendants, a manifest error hath happened, to the great damage of the said the United States of America, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may

cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 19th day of June, in the year of our Lord one thousand nine hundred and seventeen.

[SEAL.] B. E. DILLEY,
Clerk of the District Court of the United States for the Southern District of Ohio.
By HARRY F. RABE, *Deputy.*

Allowed by—
H. C. HOLLISTER,
Judge of the District Court of the United States for the Southern District of Ohio.

(Indorsed:) Filed Jun. 19, 1917. B. E. Dilley, clerk.

59 UNITED STATES OF AMERICA, *ss:*

To John J. Burckhauser, Phillip Boehler, Al Broskey, Thomas Jones, Daniel Ellen, Henry Prior, Ed R. Von Martels, John W. Jones, Elbert W. Brown, William Brown, Henry Langhorst, Henry Toker, Joseph Swartling, Prior Cook, Duff Fowler, Clem Davis, and George Phyles, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the District Court of the United States for the Southern District of Ohio, Western Division, wherein the United States of America is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this 19th day of June, in the year of our Lord one thousand nine hundred and seventeen.

H. C. HOLLISTER,
District Judge of the United States for the Southern District of Ohio.

60 On this 11th day of July, in the year of our Lord one thousand nine hundred and seventeen, personally appeared John F. Burns, deputy U. S. marshal, before me, the subscriber, Stephen H. Waters, notary public, Hamilton County, Ohio, and makes oath that he delivered a true copy of the within citation to Thomas Jones,

Daniel Ellen, Ed R. Von Martels, Elbert W. Brown, Joseph Swartling, and Henry Toker.

M. DEVANNEY,
U. S. Marshal, S. D. O.
By JOHN F. BURNS, *Deputy.*

Sworn to and subscribed the 11th day of July, A. D. 1917.
[SEAL.]
STEPHEN H. WATERS,
Notary Public, Hamilton County.

Cinti., O., June 23, 1917.

(Indorsed:) Marshal's criminal docket No. 552. Rec'd July 7–17.

We acknowledge service on the within citation as to John J. Burckhauser, Philip Boehler, and Al Broskey.

JOHN R. HOLMES,
SHERMAN T. MCPHERSON,
FROOME MORRIS,
M. MULLER,
Attys. for Defts. Above Named.

I acknowledge service on the within citation as to Prior Cook.

A. LEE BEATY,
Atty. for Deft. Above Named.

Marshal's fees: 6 services $12.00.

61 (Indorsed:) No. ——. United States District Court, Southern District of Ohio, Western Division.

(Indorsement on cover:) File No. 26043. S. Ohio, D. C. U. S. Term No. 576. The United States of America, plaintiff in error, vs. John J. Burckhauser, Philip Boehler, Al Broskey, et al. Filed July 19th, 1917. File No. 26043.

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